

# CITY OF HOPE V. GENENTECH: KEEPING FIDUCIARY DUTIES WHERE THEY BELONG

By Reed C. McBride

Scholars have called the law of fiduciary duties “messy,”<sup>1</sup> “atomistic,”<sup>2</sup> and “elusive.”<sup>3</sup> It is an area of law in which courts have used ad hoc approaches<sup>4</sup> and have often imposed fiduciary duties through “analogy to contexts in which the obligation[s] conventionally appl[y]”<sup>5</sup> rather than reasoned analysis, which has led to great “confusion and uncertainty in applying the fiduciary principle to disparate fact situations.”<sup>6</sup> This uncertainty and the “jurisprudence of analogy”<sup>7</sup> that followed often resulted in undisciplined application of the law, but in *City of Hope v. Genentech*, the California Supreme Court took a bold and important step toward rectifying the situation.<sup>8</sup> The court protected parties’ rights to design their relationships through contract and ensured that fiduciary duties would be confined to those relationships with which they truly belong.<sup>9</sup>

This Note will demonstrate why the *City of Hope* decision was correct in view of the history of fiduciary duties, the case law, the academic literature, and sound policy for the business community and nonprofit research institutions of California. Part I of this Note will describe the relevant legal background, while Part II will recount the California Supreme Court’s decision in *City of Hope*. Part III will analyze the decision with reference to the legal history, the academic literature, and the impact on the business community and nonprofit research institutions of California. Part III will

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1. D. Gordon Smith, *The Critical Resource Theory of Fiduciary Duty*, 55 VAND. L. REV. 1399, 1400 (2002).

2. Deborah A. DeMott, *Beyond Metaphor: An Analysis of Fiduciary Obligation*, 1988 DUKE L.J. 879, 915.

3. Karen E. Boxx, *The Durable Power of Attorney’s Place in the Family of Fiduciary Relationships*, 36 GA. L. REV. 1, 15 (2001).

4. Smith, *supra* note 1, at 1400.

5. DeMott, *supra* note 2, at 879.

6. J.C. Shepherd, *Law of Fiduciaries* 7 (1981).

7. DeMott, *supra* note 2, at 879.

8. *City of Hope Nat’l Med. Ctr. v. Genentech, Inc.*, 181 P.3d 142 (Cal. 2008).

9. *Id.*